

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KENNETH VARNEY,

Plaintiff,

-against-

C.O. BATMAN,

Defendant.
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08 Civ. 9702 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

The Court has received Magistrate Judge Freeman's Report and Recommendation dated March 12, 2012, recommending that plaintiff Kenneth Varney's complaint be dismissed for failure to prosecute pursuant to Federal Rules of Civil Procedure 4(m) and 41(b). (Dkt. No. 19.) Judge Freeman's Report and Recommendation follows her December 16, 2011 order to show cause, no later than January 6, 2012, why she should not recommend that his action be dismissed without prejudice for failure to prosecute. (Dkt. No. 18.)

On March 21, 2012, Varney mailed a response to the Court (Dkt. No. 20) in which he appears to claim that he sent a package of service materials to the U.S. Marshals on August 23, 2011, but that it was returned to him. He does not, however, set forth any reason why he did not respond to Judge Freeman's December 16, 2011 order to show cause by the January 6, 2012 deadline and instead submitted a request for an extension almost three months later.

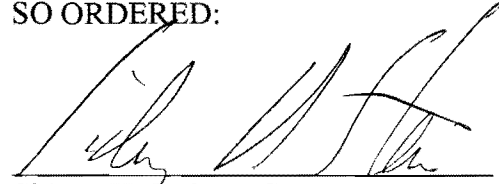
Given the repeated and extensive periods of time when plaintiff took no action to prosecute his case, and after conducting a *de novo* review of Judge Freeman's Report and Recommendation, her December 16, 2011 order, and Varney's letter mailed on March 21,

IT IS HEREBY ORDERED that:

1. Judge Freeman's Report and Recommendation is adopted in full; and,
2. Varney's complaint is dismissed, without prejudice, for failure to prosecute pursuant to Federal Rules of Civil Procedure 4(m) and 41(b).

Dated: New York, New York
March 30, 2012

SO ORDERED:



Sidney H. Stein, U.S.D.J.